



POLICE DEPARTMENT

January 23, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Brian Deboer  
Tax Registry No. 901423  
70 Precinct  
Disciplinary Case No. 2013-9972

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The above-named member of the Department appeared before me on  
July 23, 2014, charged with the following:

1. Said Police Officer Brian Deboer, on or about January 30, 2012, at approximately 1450 hours, while assigned to the 70th Precinct and on duty, in the vicinity of Flatbush Avenue and Nostrand Avenue, Kings County, did wrongfully use force against Person A, in that he struck Person A about the head.

P.G. 203-11 USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Nicole Junior, Esq. Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on January 30, 2012, Respondent was on duty, in uniform, assigned to the 70 Precinct, performing patrol duties on a marked Department scooter when at about 1450 hours in the area of Flatbush Avenue and Nostrand Avenue, Brooklyn [Civilian Complaint Review Board Exhibit (CCRBX) 1], he saw Police Officers Steven Richards and Stacy Robinson chasing males, one of whom was Person A. Respondent apprehended Person A as he came out of a store.

CCRB's Case

CCRB called Julieta Salgado as a witness and offered in evidence a video recording made by a Technical Assistance Response Unit (TARU) camera.

Julieta Salgado

Salgado, who is 28 years old and a senior at Brooklyn College, testified that although she was once arrested by a New York City police officer for an act of "civil disobedience" during a tuition increase protest by Brooklyn College students, she had not filed a complaint against a police officer prior to January 30, 2012. On that day, she was walking alone on Flatbush Avenue toward a subway station when she saw a uniformed police officer, who she identified in the Trial Room as Respondent, jump off a police scooter and grab a young black man who was coming out of the door of a pizza store.

Salgado had never seen this young man before that day, she has not seen him since that day, and she does not know his name.

Salgado recalled that she was standing about six feet away when she saw Respondent grab the young man's shoulders with both of his hands and slam him face first against a wall outside the store. Salgado identified herself in a still photo taken from a video recording made by a TARU camera (CCRBX 2) as the person who is depicted watching Respondent who is holding a young man in front of a wall. Salgado heard the young man loudly say, "I didn't do anything!" Respondent, who was standing directly behind the young man, then used his right hand to deliver a single open palm slap to the right side of the young man's head. Respondent told the young man, "I can break your fucking skull." Salgado told Respondent, "You can't do that!" Salgado called 911 on her cell phone and reported what she had seen.

On cross examination, when Salgado was asked if she had ever seen Respondent before the day of this incident, she answered, "No." She was confronted with a statement she made at her February 13, 2012 CCRB interview that "I see that particular officer around my campus. He's a character on my campus and I had the discomfort of ordering coffee at the same place as him the other day and, you know, he knows who I am, you know? We shared a moment." Salgado was asked if she knew Respondent "as a character around campus," she answered, "I've seen him. I've noticed him since that day around my campus, yes." Salgado was then asked if she had ever noticed Respondent before this incident, she answered, "Not particularly, no." When Salgado was then asked if she had seen Respondent often during the two week period between the day of this incident and the day of her CCRB interview, she answered, "Exactly."

Salgado was asked if the young man who came out of the pizza store was walking or running and “did you think that he had committed a crime?” She answered that he was walking and that she did not know if he had committed a crime. She was then confronted with a statement she made at her CCRB interview that “[S]o like I said it seems like maybe both of these young men had committed some kind of crime and they were rounding them up. Maybe they were running, maybe whatever.” Salgado explained that when she made this statement she did not actually know if the young men had been running.

Salgado was asked whether Respondent possessed a nightstick or a billy club when he got off his scooter. Although she initially answered that she did not notice this at that time, when she was reminded that at her CCRB interview she had stated that “when he came out of the scooter he had immediately pulled out his billy club.” She recalled that she had said this at her interview and that this statement was accurate. Salgado was asked whether Respondent whispered any threats in the ear of the young man. She answered that she heard Respondent say, “I’ll break your fucking skull.”

Salgado agreed that when Respondent took the young man across the street to the other side, she followed them across the street. She could not recall whether Respondent had placed the young man in handcuffs but she did recall that two female officers who were on that side of the street had another male in custody. Salgado estimated that she stood about 20 feet away from all of them. She was speaking to the 911 operator describing what she was seeing. When she was asked if she believed that this incident was a racist incident, she answered that she had “no real way of knowing that.” When she was reminded that at her CCRB interview she had stated that “it was a pretty racist-

looking scene if I may say so myself,” she agreed that she had said this at her interview and that the incident had looked to her like a “racist scene” when she witnessed it. She did not hear the young man tell Respondent, “Suck my dick.”

When Salgado was asked if she had encouraged the young man in his behavior on the day of this incident, she answered, “No.” She was then reminded that at her CCRB interview she had stated, “And I think I was kind of encouraging him too because I was like telling the cop that what you’re doing is wrong, ‘You can’t do this,’ and the young man was saying the same thing.” When she was asked if, based on what she saw that day, the young man was an angry black man, she answered, “Sure.”

Salgado confirmed that when Respondent took the young man across the street, she saw Respondent whispering in his ear but she could not hear what Respondent was whispering. During her CCRB interview she had stated that Respondent was “whispering, you know, like threats I’m assuming into his ear.” Salgado explained that she had stated that she assumed that Respondent was whispering threats because she had heard Respondent tell the young man, “I’ll break your fucking skull.”

When Salgado was asked if when Respondent took the young man across the street he had merely walked him across, she responded that “he was almost dragging him across the street.” During her CCRB interview, after she had stated that the young man was dragged across the street, when her interviewer asked, “Were his legs dragging or was he kind of walked across?” she answered, “He was, I guess, walked.”

Salgado was asked if after Respondent took the young man across the street there was yelling, screaming and a crowd gathering. She answered “No.” She was confronted with her CCRB interview at which she had answered “yes” to the question, “Was there



like yelling and screaming or was there a crowd?” Salgado was asked if she recalled this question and her “yes” answer. She responded, “I do now.”

Salgado agreed that she was very emotional at the time because she had just seen Respondent “slap and abuse a person.” Salgado confirmed that she had conversed with a female officer at the scene who appeared to be trying to calm her down. Salgado denied that she had been so riled up that she was in Respondent’s face. She was confronted with her CCRB interview at which she had stated that she “was still, like, riled up and, like, in his face.” She responded that she did recall making this statement at her CCRB interview, that this statement was accurate and that she did not wish to withdraw this statement. She testified that although she was not aware of any stabbings in the area, she was aware that a Brooklyn College student had been assaulted in the area.

On redirect examination, Salgado testified that at the point when Respondent used his right hand to slap the right side of the young man’s head, the young man was facing the wall, that Respondent was standing directly behind him, and that there was no space between the young man’s back and Respondent’s chest.

### The Video Recording

The video recording made by the TARU camera (CCRBX 3) depicts Respondent holding a person (who Respondent stipulated is Person A) in front of a wall. However, Respondent and Person A are only sporadically visible in this video because the camera which produced this video is a rotating camera which pans the entire area in front of the camera. Respondent is not seen slapping Person A on this video.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent recalled that he saw four males who were being pursued by Richards and Robinson run from the street into a McDonald's restaurant. Respondent related that because there have been problems in the past with school-age youths at this location the manager has requested that police "clear out people who are not actually patrons." Respondent has worked in this area for five years and was aware of the routes that perpetrators often used after committing a crime. Respondent assumed that the four males either committed a crime or were wanted for some reason.

When Respondent saw one of the males, whose name he later learned was Person A, coming out of the Uncle Vic's pizza store he grabbed him by his shoulders, and placed him against the glass front of the store. Another of the males was apprehended across the street by Richards or Robinson. Since Respondent saw this male being placed in handcuffs, Respondent believed that there was some "substance" as to why these males were pursued by Richards and Robinson and so he handcuffed Person A. Respondent denied slapping Person A. He held Person A against the storefront for about two minutes. A woman who Respondent believed was elderly was standing nearby. Because she verbally interjected as he was holding Person A, he told her to leave three times.

Respondent used his left hand to hold Person A by the handcuff, placed his right hand on Person A's shoulder and walked Person A across the street. Person A called Respondent a "white motherfucker" and told Respondent to "suck my dick." Person A



called Robinson a “bitch.” Person A and the other apprehended male were arrested by Richards and Robinson for disorderly conduct and possession of marijuana.

On cross examination, Respondent agreed that during his CCRB interview on September 12, 2012, he stated that after he apprehended Person A was compliant. Respondent confirmed that while he had Person A restrained in front of Uncle Vic’s Pizza, the woman approached him several times but she never got closer than about ten feet away from him and “she did not physically interrupt my transaction” with Person A. When Respondent reasserted that he had told the woman who was observing him to leave on “multiple occasions,” he was confronted with the fact that at his CCRB interview when he was asked “Did you ever speak to her directly or give her any orders to leave the area?” he had answered, “No.”

### FINDINGS AND ANALYSIS

It is charged that on January 30, 2012, Respondent wrongfully used force against Person A by striking him about the head. Although Respondent is not seen slapping Person A on the video, since the TARU camera which recorded Respondent as he held Person A was a rotating camera which panned the area in front of the camera, it was not constantly focused on Respondent as he held Person A. As a result, the recording produced by this camera (CCRBX 3) is not dispositive on the question of whether Respondent slapped Person A once on the side of his head, as Salgado testified she saw him do, nor is it dispositive on the question of whether when Respondent got off his scooter he immediately pulled out his “billy club” as Salgado asserted he had.



I find Respondent guilty based on Salgado's testimony. The believability of Salgado's testimony is enhanced by the fact that she immediately called 911 to report what she had just seen Respondent do to Person A. Respondent also did not dispute Salgado's testimony that she had never previously made a complaint against a police officer even though she was once arrested by a police officer.

Most significantly, Salgado's description of the force Respondent used was devoid of suspect embellishment. If Salgado was inventing a false allegation to make trouble for Respondent, it is likely that she would have claimed that she had seen Respondent do more than merely slap Person A one time. Also, although Respondent's counsel asserted that Salgado was not an independent witness, her testimony that she did not know who Person A was at the time she witnessed his encounter with Respondent, and that she has still never met or spoken to Person A, was not disputed by Respondent.

As to Respondent's counsel's claim that Salgado has animosity toward Respondent, Salgado did not display any animosity during her testimony and she has consistently asserted that she never really noticed Respondent's presence around the Brooklyn College campus until after she saw him slap Person A on January 30, 2012.

Although during cross-examination, Salgado was confronted with comments that she volunteered during her CCRB interview that constituted speculation or conjecture, during her testimony at this trial she acknowledged that many of her comments had been conjectural. For example, although Salgado volunteered during her CCRB interview that "it was a pretty racist-looking scene," when she was asked at this trial if she believed that this incident was a racist incident, she acknowledged that her previous statement had constituted conjecture because she had "no real way of knowing that."



Moreover, her speculative comments during her CCRB interview do not establish an anti-police bias that would serve to impeach her claim that she saw Respondent slap Person A because she described Person A as “an angry black man” and because she also offered a speculative negative comment regarding Person A when she stated that “it seems like maybe both of these young men had committed some kind of crime and they were rounding them up.” As to Salgado’s comment during her CCRB interview that although she could not hear what Respondent said to Person A after they crossed the street Respondent was “probably threatening” Person A, this conjecture was not baseless since Salgado had already heard Respondent tell Person A that he could break his skull.

Eyewitness testimony can be challenged not only by claiming that the eyewitness is lying but also by asserting that the eyewitness has visually misinterpreted innocent physical contact as an intentional use of force. However, here Respondent has not asserted that he had engaged in any hand motion which Salgado, who was standing only about ten feet away, could have misinterpreted as being a slap. Moreover, Respondent’s own testimony must be examined in light of his claim that he had to tell Salgado to leave the area on “multiple occasions” because she was not complying with his direction to leave. This claim appears to be an invented assertion designed to discredit Salgado since at his CCRB interview when he was asked “Did you ever speak to her directly or give her any orders to leave the area?” he answered, “No.”

Finally, since Respondent testified that Person A was compliant, the force Respondent used against him was gratuitous in nature.

Therefore, I find Respondent guilty of wrongfully using force against Person A by slapping him once on the side of his head.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on June 30, 1992. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The CCRB prosecutor recommended that the penalty to be imposed on Respondent consist of the forfeiture of ten vacation days.

In *Case No. 2012-8631* (July 30, 2013), an eight-year officer forfeited 12 vacation days as a penalty after he pleaded guilty to wrongfully using force by punching a handcuffed suspect on the face with a closed fist. More recently, in *Case No. 2013-11030* (May 28, 2014), a nine-year officer forfeited ten vacation days as a penalty after he pleaded guilty to punching and kicking a suspect without police necessity and lifting the handcuffed suspect by his handcuffs and twisting the handcuffs. Since Respondent's wrongful use of force here consisted of a single, open handed slap, a lesser penalty than the penalties imposed in the cited cases is warranted. I have also taken into consideration Respondent's consistently excellent performance evaluations, his impressive Department Recognition Summary, and the fact that his only previous formal disciplinary adjudication involved non-use-of-force misconduct that he committed 16 years ago.

It is, therefore, recommended that Respondent forfeit five vacation days.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner - Trials

**APPROVED**

MAR 27 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

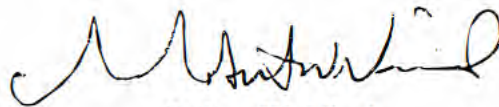
From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER BRIAN DEBOER  
TAX REGISTRY NO. 901423  
DISCIPLINARY CASE NO. 2013-9972

Respondent received an overall rating of 4.0 on his 2013 annual performance evaluation, 4.5 on his 2012 evaluation, and 4.5 on his 2011 evaluation. He has been awarded four Commendations, four Meritorious Police Duty medals and ten Excellent Police Duty medals. [REDACTED].

He was placed on Level 1 Force Monitoring on June 25, 2009 for having received three CCRB complaints during one year. This monitoring ended on August 3, 2010.

In 2000, he forfeited a total of 20 days (consisting of 12 suspension days and eight vacation days) after he pleaded guilty to having appropriated a Department file cabinet for his personal use in January 1999.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner – Trials